BEFORE THE
CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

In the Matter of:

ALAN B. COLDIRON
(Claimant)

PRECEDENT
BENEFIT DECISION
No. P-B-162
Case No. 73-1477

S.S.A. No.

EMPLOYMENT DEVELOPMENT DEPARTMENT

The Department appealed from Referee's Decision No. S-UCX-32385 which held that the claimant was not ineligible for full unemployment benefits under section 1279 of the Unemployment Insurance Code for the weeks specified below and was not disqualified under section 1257(a) of the code.

STATEMENT OF FACTS

The claimant enlisted in the United States Naval Reserve in 1969. He served a two-year period on active duty. After his release from active duty in May 1972, he was required to remain in the naval reserve as part of his military obligation. His reserve duties included attendance at drills one weekend each month as well as a period of active duty each summer.

The claimant filed his claim for unemployment benefits effective May 21, 1972. On his initial claim statement, he indicated that he was an active member of a military reserve unit. He was told by a Department interviewer that he should report his reserve pay when claiming benefits. When filing his continued claim for the week ending June 17, 1972, he reported the receipt of $24.40.

The claimant attended weekend drills on September 9 and September 10, 1972, October 14 and October 15, 1972, and on November 11 and November 12, 1972. He was entitled to receive reserve pay in the amount of $27.42 for

each of those dates. When filing his continued claims for the weeks ending September 9, September 16, October 14, October 21, November 11 and November 18, 1972, he reported to the Department that he had not worked and had no earnings during each of those weeks. He received his full weekly benefit amount for such weeks. Subsequently, the Department issued a determination holding that the claimant was not entitled to full weekly benefits for the three two-week periods ending September 16, October 21 and November 18, 1972. In addition, the determination held that the claimant was disqualified for a ten-week period for misstatement of material facts concerning his work and earnings during the six weeks in question.

The claimant testified that he did not report his reserve pay because he was confused about whether he was an active or inactive member of the reserve. He further contended that his weekend drills were an obligation and that he did not consider his reserve participation as a job.

REASONS FOR DECISION

Section 8506(a) of Title 5 of the United States Code provides for unemployment benefits to ex-servicemen. Eligibility for such benefit payments shall be determined under the provisions of the unemployment insurance law of the state to which wage credits have been assigned, which in this case is California.

Section 1279 of the Unemployment Insurance Code provides:

> "Each individual eligible under this chapter who is unemployed in any week shall be paid with respect to that week an unemployment compensation benefit in an amount equal to his weekly benefit amount less the amount of wages in excess of twelve dollars ($12) payable to him for services rendered during that week. The benefit payment, if not a multiple of one dollar ($1), shall be computed to the next higher multiple of one dollar ($1). For the purpose of this section only 'wages' includes any and all compensation for personal services whether performed as an employee or as an independent contractor

or as a juror or as a witness, but does not include any payments, regardless of their designation, made by a city of this state to an elected official thereof as an incident to such public office."

Section 926 of the code provides:

"Except as otherwise provided in this article 'wages' means all remuneration payable to an employee for personal services, whether by private agreement or consent or by force of statute, including commissions and bonuses, and the reasonable cash value of all remuneration payable to an employee in any medium other than cash."

Section 601 of the code provides:

"'Employment' means service, including service in interstate commerce, performed by an employee for wages or under any contract of hire, written or oral, express or implied."

In addition, section 621 of the code contains various definitions of "employee." None are applicable to the claimant, with the possible exception of section 621(b) which sets forth the following definition:

"(b) Any individual who, under the usual common law rules applicable in determining the employer-employee relationship, has the status of an employee."

In Appeals Board Decision No. P-B-159, we recently examined the status of a military serviceman with respect to whether an employer-employee relationship existed between him and the government. We pointed out the factors distinguishing the military service from the common law employer-employee relationship. We held that the status of a military serviceman is quite different than that of the usual employee. We characterized military service as a form of voluntary or involuntary servitude, founded upon a duty which the soldier owed to the government as a resident and citizen. We reiterated our holding in Appeals Board Decision No. P-B-5 that "work" and "employment" as used in the code may logically be accepted as synonymous terms. Specifically, we held in Appeals Board Decision No. P-B-159

that an ex-serviceman's "most recent work" was not his military service, but rather his last civilian employment prior to entering the military service.

Sections 926, 601 and 621(b), above quoted, apply only to employees. We therefore agree with the referee's conclusion that the claimant was not in employment during his weekend drills for the naval reserve, that he did not receive remuneration as an employee and therefore did not receive wages that should be deducted from his weekly benefit amount under code section 1279.

We recognize that section 1279 contains a special definition of wages (as does its companion section 1252) which is applicable only to that section. However, the claimant is clearly not an employee, independent contractor, juror or witness. The court held in In re Haines, 195 Cal. 605; 234 Pac. 883 that where a statute enumerates the persons or things to be affected by its provisions, there is an implied exclusion of others.

Section 1257(a) of the code provides:

> "An individual is also disqualified for unemployment compensation benefits if:
>
> "(a) He wilfully made a false statement or representation or wilfully failed to report a material fact to obtain any unemployment compensation benefits under this division."

Since we have concluded that the claimant did not receive "wages" which he was required to report to the Department under section 1279 of the code and since his military duties did not constitute employment, we conclude that he did not make a false statement or fail to report a material fact within the meaning of section 1257(a) of the code. He was therefore not subject to disqualification under that section.

We are aware that the handbook issued to claimants by the Department states that military pay is to be reported. However, the questions that a person applying for unemployment insurance must answer cannot be broader than the statutes providing for unemployment insurance.

DECISION

The decision of the referee is affirmed. The claimant is not ineligible for full unemployment benefits under section 1279 of the code and he is not subject to disqualification under section 1257(a) of the code. Benefits are payable if the claimant is otherwise eligible.

Sacramento, California, April 9, 1974

CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

JOHN B. WEISS, Vice-Chairman

DON BLEWETT

CARL A. BRITSCHGI

EWING HASS